

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## SENATE ENROLLED ACT No. 234

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AN ACT to amend the Indiana Code concerning professions and occupations.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 25-6.1-1-3, AS AMENDED BY P.L.1-2006, SECTION 422, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. As used in this article:

"Auction" means a sale transaction conducted by means of oral or written exchanges between an auctioneer and the members of the auctioneer's audience, which exchanges consist of a series of invitations for offers for the purchase of goods or real estate made by the auctioneer and offers to purchase made by members of the audience and culminate in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience.

"Auction company" means any person or persons who, as a part of its business, arranges, manages, sponsors, advertises, or carries out auctions.

"Auction house" means an established place of business including an auction barn, a sale barn, and a sale pavilion and its contiguous surroundings where two (2) or more auctions are held within any twelve (12) month period and where representations are regularly made that goods are sold at auction. Each day during which goods or real estate are being offered for sale at auction shall constitute one (1) auction. A sale barn or livestock auction market that is used exclusively for the auctioning of livestock and is licensed by the Indiana state

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~~board of animal health is not an auction house as defined herein:~~

"Auctioneer" means an individual who is engaged in, or who by advertising or otherwise holds the individual out as being available to engage in, the calling for, the recognition of, and the acceptance of offers for the purchase of goods or real estate at an auction.

"Commission" means the Indiana auctioneer commission.

"Goods" means any goods, wares, chattels, merchandise, or other personal property, including domestic animals and farm products.

"Licensee" means any person licensed ~~or issued a temporary permit~~ under this article and, in the case of an ~~auction house or~~ auction company, includes the person required to obtain a license for such ~~auction house or~~ auction company.

"Organization" means a corporation, a limited liability company, a partnership, a trust (specifically including a business trust), a firm, an association, or any other form of business enterprise which is owned by two (2) or more individuals.

"Person" means an organization or an individual.

"Real estate" means any right, title, or interest in real property, including fixtures.

"Licensing agency" means the Indiana professional licensing agency established by IC 25-1-5-3.

SECTION 2. IC 25-6.1-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) The commission is empowered to do the following:

- (1) Administer and enforce the provisions of this article.
- (2) Adopt such rules in accordance with IC 4-22-2 and such forms as are necessary or appropriate for the administration and the effective and efficient enforcement of this article.
- (3) Issue, suspend, and revoke licenses in accordance with this article.
- (4) Subject to IC 25-1-7, investigate complaints concerning licensees or persons the commission has reason to believe should be licensees, specifically including complaints respecting failure to comply with this article or the rules, and to take appropriate action pursuant to IC 25-1-11.
- (5) Bring actions, in the name of the state of Indiana, in an appropriate circuit court in order to enforce compliance with this article or the rules by restraining order or injunction.
- (6) Hold public hearings on any matters for which a hearing is required under this article and to have all powers granted in IC 4-21.5.
- (7) Adopt a seal and, through its secretary, certify copies.

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(b) The licensing agency shall provide necessary employees and consultants to enforce this article.

(c) The commission shall adopt rules under IC 4-22-2 establishing the following:

(1) Standards for competent:

(A) practice as an auctioneer; and

(B) operation of an auction company. ~~or auction house.~~

(2) Continuing education requirements for an individual who has reactivated an auctioneer license with less than twelve (12) months remaining in the licensing period.

SECTION 3. IC 25-6.1-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. Coverage. (a) Except as provided in subsection (b), ~~of this section,~~ no individual may act as an auctioneer and no person may operate ~~an auction house~~ or an auction company without obtaining and having in full force and effect a valid license issued by the commission in accordance with this chapter.

(b) The requirements of this article do not apply to:

(1) An auction of goods or real estate conducted exclusively by individuals who personally own such goods or real estate and who did not acquire such goods or real estate for resale.

(2) An auction conducted by or under the direction of any public authority.

(3) An auction conducted pursuant to any judicial order or to the settlement of a decedent's estate.

(4) A sale conducted by or on behalf of any political party, church, charitable corporation, or association if the individual conducting the sale receives no compensation and does not, by advertising or otherwise, hold himself ~~or herself~~ out as being available to engage in the sale of goods or real estate at auction.

SECTION 4. IC 25-6.1-3-2, AS AMENDED BY P.L.105-2008, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) Every individual, before acting as an auctioneer, must obtain a license from the commission.

(b) An applicant for a license must:

(1) be at least eighteen (18) years of age;

(2) have completed at least eighty (80) actual hours of auction instruction from a course provider approved by the commission;

(3) not have a conviction for:

(A) an act which would constitute a ground for disciplinary sanction under IC 25-1-11; or

(B) a felony that has a direct bearing on the applicant's ability



to practice competently.

(c) Auction instruction required under subsection (b) must provide the applicant with knowledge of all of the following:

- (1) The value of real estate and of various goods commonly sold at an auction.
- (2) Bid calling.
- (3) Sale preparation, sale advertising, and sale summary.
- (4) Mathematics.
- (5) The provisions of this article and the commission's rules.
- (6) Any other subject matter approved by the commission.

(d) An individual seeking an initial license as an auctioneer under this article shall file with the commission a completed application on the form prescribed by the commission. When filing an application for an auctioneer license, each individual shall pay a nonrefundable examination fee established by the commission under IC 25-1-8-2.

(e) When applying for a renewal of an auctioneer license, each individual shall do the following:

- (1) Apply in a manner required by the commission, including certification by the applicant that the applicant has complied with the requirements of IC 25-6.1-9-8, unless the commission has granted the applicant a waiver under IC 25-6.1-9-9.
- (2) Pay the renewal fee established by the commission under IC 25-1-8-2.

(f) Upon the receipt of a completed application for an initial or a renewal license, the commission shall examine the application and may verify the information contained therein.

(g) An applicant who is seeking an initial license must pass an examination approved by the commission that covers subjects and topics of knowledge required to practice as an auctioneer. The commission shall hold examinations as the commission may prescribe.

(h) The commission shall issue an auctioneer's license, in such form as it may prescribe, to each individual who meets all of the requirements for licensing and pays the appropriate fees.

(i) Auctioneer licenses shall be issued for a term of four (4) years. A license expires at midnight on the date established by the licensing agency under IC 25-1-6-4 and every fourth year thereafter, unless renewed before that date. If the license has expired, it may be reinstated not later than four (4) years after the date it expired if the license holder meets the requirements of IC 25-1-8-6(c).

(j) If a license has expired for a period of more than four (4) years, the holder of the license may have the license reinstated by satisfying the requirements for reinstatement under IC 25-1-8-6(d).



(k) The commission may waive the requirement that a nonresident applicant pass an examination and that the nonresident submit written statements by two (2) individuals, if the nonresident applicant:

- (1) is licensed to act as an auctioneer in the state of the applicant's domicile;
- (2) submits with the application a duly certified letter of certification issued by the licensing board of the applicant's domiciliary state;
- (3) is a resident of a state whose licensing requirements are substantially equal to the requirements of Indiana;
- (4) is a resident of a state that grants the same privileges to the licensees of Indiana; and
- (5) includes with the application an irrevocable consent that actions may be commenced against the applicant. The consent shall stipulate that service of process or pleadings on the commission shall be taken and held in all courts as valid and binding as if service of process had been made upon the applicant personally within this state. If any process or pleading mentioned in this subsection is served upon the commission, it shall be by duplicate copies. One (1) of the duplicate copies shall be filed in the office of the commission and one (1) shall be immediately forwarded by the commission by registered or certified mail to the applicant against whom the process or pleadings are directed.

(l) The commission may enter into a reciprocal agreement with another state concerning nonresident applicants.

~~(m) The commission may, for good cause shown, upon the receipt of an application for a license, issue a temporary permit for such reasonable period of time, not to exceed one (1) year, as the commission deems appropriate. A temporary permit has the same effect as a license and entitles and subjects the permittee to the same rights and obligations as if the individual had obtained a license.~~

~~(n) An applicant for a temporary permit must do the following:~~

- ~~(1) File an examination application;~~
- ~~(2) Pass the examination at one (1) of the next two (2) regularly scheduled examinations.~~

~~(o) An individual who does not pass the examination required under subsection (n) may not be issued a temporary permit.~~

SECTION 5. IC 25-6.1-3-3 IS REPEALED [EFFECTIVE JULY 1, 2014]. Sec. 3: (a) This section does not apply to an organization that operates a wholesale dealer automobile auction:

(b) Every person, before operating an auction house, must obtain a license from the commission for that auction house:



(c) Except as provided in subsection (d), before applying for a license from the commission to operate an auction house, the following must obtain a license as an auctioneer as provided in section 2 of this chapter:

(1) An individual who seeks to operate an auction house.

(2) One (1) or more individuals designated by an organization that seeks to operate an auction house.

(d) Subsection (c) does not apply to:

(1) a person that holds a valid license for an auction house as of June 30, 1998; or

(2) a person that holds a valid renewal of a license described in subdivision (1).

(e) Every applicant seeking to operate an auction house shall file with the commission a completed application on a form provided by the commission for a license for each auction house to be operated by that person. Each application shall be accompanied by the license fee prescribed by section 5 of this chapter and a surcharge described in IC 25-6.1-8-2.

(f) Upon the receipt of a completed application for an initial or a renewal license, the commission shall examine the application and may verify the information contained therein.

(g) If the commission determines that the application has been completed and that the statements made therein by the applicant are true, the commission shall issue a license, in such form as it may prescribe, for such auction house.

(h) Auction house licenses shall expire on a date established by the licensing agency under IC 25-1-6-4, and every fourth year thereafter.

(i) If the holder of an auction house license does not renew the license by the date established by the licensing agency, the license expires and becomes invalid without any action taken by the commission.

(j) The holder of an auction house license that has been expired for not more than four (4) years may have the license reinstated by meeting the requirements under IC 25-1-8-6(c).

(k) The holder of an auction house license that has been expired for more than four (4) years may have the license reinstated by satisfying the requirements for reinstatement under IC 25-1-8-6(d).

SECTION 6. IC 25-6.1-3-4, AS AMENDED BY P.L.105-2008, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Every person other than:

(1) an individual who is a licensed auctioneer; or

(2) an individual who has a licensed auction house (until July 1,



**2014);**

who is seeking to operate as an auction company must obtain a license from the commission. Notwithstanding the fact that an individual who is a licensed auctioneer or **(until July 1, 2014)** an individual who has a licensed auction house also has an interest in an organization, every organization which seeks to operate an auction company must obtain a license for that auction company.

**(b) After June 30, 2014, an individual who holds an auction house license under IC 25-6.1-3-3 (before its repeal) may not conduct business without holding an auction company license as required under this article. This subsection expires April 1, 2016.**

**(c) An individual who holds an unexpired auction house license under IC 25-6.1-3-3 (before its repeal) may file with the commission a completed application for an auction company license on the form prescribed by the commission in rules adopted by the commission under IC 4-22-2. Upon the receipt of a completed application for an auction company license under this chapter, the commission shall examine the application and may verify the information contained in the application. Upon a determination by the commission that an application is complete and verified, the commission shall issue an auction company license, in a form it prescribes, to the applicant for a term equal to the remaining term of the unexpired auction house license. If an individual described in this subsection files a completed application for an auction company license before June 1, 2014, the commission shall determine whether the application is complete and verified before June 15, 2014. If the commission determines that the application is complete and verified, the commission shall issue the individual an auction company license before July 1, 2014.**

~~(b)~~ **(d)** Every such person shall file with the commission a ~~completed~~ **complete** application on the form prescribed by the commission. Each application shall be accompanied by the license fee prescribed by section 5 of this chapter and a surcharge described in IC 25-6.1-8-2.

~~(c)~~ **(e)** Upon the receipt of a completed application for an initial or renewal license, the commission shall examine the application and may verify the information contained therein.

~~(d)~~ **(f)** Upon a determination by the commission that an application is ~~completed~~ **complete** and duly verified, the commission shall issue an auction company license, in such form as it may prescribe, to the applicant.

~~(e)~~ **(g)** Auction company licenses shall expire on a date established



by the licensing agency under IC 25-1-6-4, and every fourth year thereafter.

~~(f)~~ **(h)** If the holder of an auction company license does not renew the license by the date established by the licensing agency, the license expires and becomes invalid without any action taken by the commission.

~~(g)~~ **(i)** The holder of an auction company license that has been expired for not more than four (4) years may have the license reinstated by meeting the requirements under IC 25-1-8-6(c).

~~(h)~~ **(j)** The holder of an auction company license that has been expired for more than four (4) years may have the license reinstated by satisfying the requirements for reinstatement under IC 25-1-8-6(d).

~~(i)~~ **(k)** Any individual who wishes to operate an auction company, and who is exempt under subsection (a) from obtaining an auction company license, shall, not more than thirty (30) days before the date on which the individual begins to operate an auction company, notify the commission, in a writing signed by the individual, that the individual is operating as an auction company or as more than one (1) auction company. The individual shall specify in such written notification the trade or business name, and the address of the principal place of business, of each auction company which the individual operates. Whenever an individual to whom this subsection applies shall discontinue the operation of an auction company theretofore operated by the individual, or shall change its address or trade or business name, the individual shall promptly notify the secretary of the commission of such discontinuance or change, in a writing signed by the individual.

SECTION 7. IC 25-6.1-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. All auctions arranged by or through ~~an auction house or~~ an auction company shall be conducted exclusively by individuals who are licensed as auctioneers under this chapter. ~~For purposes of this subsection only, the term "auction house" includes a sale barn or sale pavilion that is used exclusively for the auctioning of livestock and is licensed by the Indiana state board of animal health.~~

SECTION 8. IC 25-6.1-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. ~~Written Contracts.~~ ~~Except with respect to goods sold through an auction house,~~ No licensee shall sell goods or real estate at auction until the auctioneer or auction company involved has first entered into a written contract with the owner or consignor of such goods or real estate, which contract sets forth the terms and conditions upon which such auctioneer or auction company accepts the goods or real estate for sale. A copy of every



written contract shall be retained for a period of two (2) years from the date of the auction.

SECTION 9. IC 25-6.1-6-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. Advertising. All advertisements of auctions shall disclose:

- (1) the auctioneer's name and the name of ~~the auction house~~ or the auction company involved; and
- (2) the name of the owner or consignor of goods or real estate to be sold or the fact that the goods are being sold on general consignment.

SECTION 10. IC 25-6.1-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) An individual may not act as an auctioneer without first having obtained and having in full force and effect the license required under this article.

~~(b) Except as provided in IC 25-6.1-3-3, a person may not operate an auction house without having obtained and having in full force and effect the license for the auction house as required under this article.~~

~~(c)~~ (b) A person (except a person who shall have become exempt, by reason of compliance with the provisions of IC 25-6.1-3-4, from the auction company licensing requirements of this article) may not operate an auction company without first having obtained and having in full force and effect the auction company license required under this article.

~~(d)~~ (c) A person who knowingly or intentionally violates the provisions of this section commits a Class A misdemeanor.

SECTION 11. IC 25-6.1-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) If the total amount in the auctioneer recovery fund (including principal and interest) is less than three hundred sixty thousand dollars (\$360,000) on June 30 in an odd-numbered year after the payment of all claims and expenses, the auctioneer commission shall assess a surcharge according to the following formula in order to maintain the fund at an approximate level of four hundred thousand dollars (\$400,000):

STEP ONE: Determine the amount remaining in the fund on June 30 of the current year after all expenses and claims have been paid.

STEP TWO: Subtract the amount determined under STEP ONE from four hundred thousand dollars (\$400,000).

STEP THREE: Determine the number of licensees who had licenses in effect on June 30 of the current year.

STEP FOUR: Divide the number determined under STEP TWO by the number determined under STEP THREE.

(b) The auctioneer commission shall assess the surcharge described



in subsection (a) against each licensee who:

- (1) receives an initial license; **or**
- (2) receives a renewal license. ~~or~~
- ~~(3) receives a temporary permit.~~

(c) The auctioneer commission shall assess the surcharge described in subsection (a) for the two (2) year period beginning on July 1 of the current year through June 30 of the next odd-numbered year.

(d) The surcharge assessed under this section is in addition to any other fee under this article.

SECTION 12. IC 25-6.1-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. Any auctioneer **or** auction company ~~or auction house~~ that is licensed or renews a license under this article after December 31, 1987, and upon whom personal service cannot be made with reasonable diligence shall be considered to have appointed the commission as the licensee's agent for service of process for purposes of actions filed under section 4 of this chapter for recovery from the auctioneer recovery fund. Service of process under this section shall be made as nearly as practicable in the manner prescribed by the Indiana Rules of Trial Procedure for service on corporations.

SECTION 13. IC 25-6.1-8-10, AS AMENDED BY P.L.134-2013, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 10. (a) If the commission is required to make any payment from the auctioneer recovery fund in settlement of a claim or toward the satisfaction of an order under this chapter, the commission shall suspend the judgment debtor's license. The licensee is not eligible to be licensed again as either an auctioneer **or** auction company ~~or auction house~~ until the licensee has repaid in full the amount paid from the auctioneer recovery fund with interest of twelve percent (12%) per annum.

(b) A license suspension issued under this section must be done in accordance with IC 4-21.5-3-6. The licensee may petition for review under IC 4-21.5-3-7.

SECTION 14. IC 25-6.1-8-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 12. Subject to the approval of the state budget agency, the auctioneer commission may expend the interest earned by the auctioneer recovery fund for: ~~publications that provide:~~

- (1) information concerning the commission's activities and administrative rulings; **and**
- (2) other educational information concerning the practice of auctioneering; **and**



**(3) expenses related to the continuing education program.**

SECTION 15. IC 25-6.1-9-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 6.5. The licensing agency may hire an education officer who reports directly to the director of the licensing agency to oversee routine and ongoing compliance with the continuing education requirements of this chapter.**

SECTION 16. [EFFECTIVE UPON PASSAGE] **The Indiana auctioneer commission shall adopt emergency rules in the manner provided under IC 4-22-2-37.1 to prescribe the application form described in IC 25-6.1-3-4(c), as amended by this act. The emergency rules must be adopted and in effect before July 1, 2014. The emergency rules expire on the earlier of:**

- (1) the date permanent rules are adopted under IC 25-6.1-3-4(c), as amended by this act; or**
- (2) June 30, 2015.**

**This SECTION expires July 1, 2015.**

SECTION 17. **An emergency is declared for this act.**



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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